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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 517 and 552

[GSAR Change 71; GSAR Case 2007-G500; Docket No. 2008-0007;

Sequence No. 3]

RIN 3090-AI51

General Services Administration Acquisition Regulation

(GSAR); Rewrite of GSAR Part 517, Special Contracting

Methods

AGENCIES: Office of Government-wide Policy, Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule, with editorial revisions to the second proposed rule, amending the General Services Administration Acquisition Regulation (GSAR) to update requirements for special contracting methods by eliminating out of date references and reorganizing the text to align with the Federal Acquisition Regulation (FAR).

DATES: Effective: **[Insert date 30 days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Janet Fry, General Services Acquisition Policy Division, GSA, by phone at 703-605-3167 or by email at janet.fry@gsa.gov. For information pertaining to status or publication schedules, contact the

Regulatory Secretariat at 202-501-4755. Please cite GSAR case 2007-G500.

SUPPLEMENTARY INFORMATION:

I. Background

The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update outdated statutes and remove unnecessary or duplicative language from sections of GSAR part 517 that provide requirements for special contracting methods.

GSA published a proposed rule in the Federal Register at 73 FR 32274 on June 6, 2008 <http://www.gpo.gov/fdsys/pkg/FR-2008-06-06/pdf/E8-12613.pdf> as part of the General Services Administration Acquisition Manual (GSAM) Rewrite initiative undertaken by GSA to update the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR). The GSAM incorporates the General Services Administration Acquisition Regulation (GSAR) as well as internal agency acquisition policy. No comments were received in response to the Federal Register Notice for the proposed rule.

GSA published a second proposed rule in the Federal Register at 80 FR 34126 on June 15, 2015 <http://www.gpo.gov/fdsys/pkg/FR-2015-06-15/pdf/2015-14198.pdf> due to the additional edits made to GSAR part 517

and the length of time since the proposed rule was published in 2008. No comments were received in response to the Federal Register Notice for the second proposed rule.

II. Discussion and Analysis

To keep the GSAR current, GSA has updated statutes, removed unnecessary or duplicative language, aligned part 517 with the FAR and made editorial revisions as described below.

A. Summary of significant changes

The final rule:

- Replaces “multiyear” with “multi-year” through the 517.1 subpart.
- Updates the statutes cited in GSAR 517.109.
- Deletes GSAR 517.200(b), GSAR 517.202(a)(2)(iv), GSAR 517.202(a)(2)(v) and GSAR 517.207(a), and makes conforming changes.
- Removes and reserves section 517.203 because the introduction text and paragraphs are duplicative of FAR 17.207 and GSAR 517.207.
- Replaces the content of GSAR 517.207(b) with new text, clarifying the need for the Contracting Officer to document the determination.
- Updates the program reference in GSAR 517.208(a).

- Addresses other administrative and typographical updates.

Note: The following changes proposed in the second proposed rule were not retained in the final rule:

- The proposed new text in GSAR 517.203 cross referencing the requirements in FAR 22.407 when using option provisions was not retained in the final rule as the FAR adequately addresses the inclusion of option clauses.

- The proposed new text in GSAR 517.207 reminding Contracting Officers to seek new wage determinations when exercising options was not retained in the final rule since the requirement is adequately addressed in FAR 22.1007 for Service Contract Labor Standard and in FAR 22.404-12 for Wage Rate Requirements (Construction).

B. Analysis of public comments

No comments on the second proposed rule were received from the public by the August 14, 2015 closing date.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the revisions are administrative in nature. The changes merely update and reorganize existing GSAR coverage.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 517 and 552

Government procurement.

Dated: May 27, 2016

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 517 and 552 as set forth below:

1. The authority citation for 48 CFR parts 517 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 517—SPECIAL CONTRACTING METHODS

Subpart 517.1 – Multi-year Contracting

2. Revise the heading of subpart 517.1 to read as set forth above.

517.109 [Amended]

3. Amend section 517.109 by removing from the introductory text "multiyear", "40 U.S.C. 490(a)(14)", and "40 U.S.C. 481(a)(3)" and adding "multi-year", "40 U.S.C. 581(c)(6)", and "40 U.S.C. 501(b)(1)(B)" in their places, respectively.

4. Revise section 517.200 to read as follows:

517.200 Scope of subpart.

This subpart applies to all GSA contracts for supplies and services, including:

(a) Services involving construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property.

(b) Architect-engineer services.

5. Amend section 517.202 by—

a. Removing from the introductory text of paragraph (a)(1) "You should use options" and adding "Options may be used" in its place;

b. Removing from paragraph (a)(2)(i) "You anticipate a" and adding "There is an anticipated" in its place;

c. Revising paragraph (a)(2)(ii);

d. Removing paragraphs (a)(2)(iv) and (a)(2)(v); and

e. Removing from paragraph (a)(3) "Do not use an option" and adding "An option shall not be used" in its place.

The revision reads as follows:

517.202 Use of options.

(a) * * *

(2) * * *

(ii) When there is both a need for additional supplies or services beyond the basic contract period and the use of multi-year contracting authority is inappropriate.

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517.203 [Removed and Reserved]

6. Remove and reserve section 517.203.

7. Revise section 517.207 to read as follows:

517.207 Exercise of options.

In addition to the requirements of FAR 17.207, the Contracting Officer must also:

(a) Document the contract file with the rationale for an extended contractual relationship if the contractor's performance rating under the contract is less than satisfactory.

(b) Determine that the option price is fair and reasonable.

517.208 [Amended]

8. Amend section 517.208 by removing from paragraph (a) "FSS's Stock or" and adding "the Federal Acquisition Service's" in its place.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

10. Amend section 552.217-70 by revising the date of the provision; and removing from paragraph (a), in the second sentence "standard);" and adding "standard)," in its place.

The revision reads as follows:

552.217-70 Evaluations of options.

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EVALUATION OF OPTIONS (JUL 2016)

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[BILLING CODE 6820-61]

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